



COMMITTEE on JUDICIAL AFFAIRS
TEXAS HOUSE of REPRESENTATIVES

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12 January 1994

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The Honorable Dan Morales
Attorney General of Texas
Price Daniel, Sr., State Office Building

FILE # MI-24038-94

Opinion Committee

RE: Request for Attorney General Opinion # 24038

Dear General Morales:

During the last session, I authored and passed H.B. 887 amending Tex. Civ. Prac. & Rem. Code § 22.001 (Witness Fees) to require a flat \$10 witness fee for subpoenaed witnesses to attend court. A similar bill was filed in the 72d Legislature by Rep. Junell and heard and approved by the Judicial Affairs Committee.

Your office was asked to comment on the fiscal implications of H.B. 887 and reported that your agency already paid the federal fee for witnesses of \$30 per day.

To my knowledge, no one ever questioned whether or believed that Rep. Junell's bill or mine applied to subpoenae of witnesses who would not actually appear in court. Nonetheless, the statute does require that the witness fee be attached to the subpoena.

Several court reporting firms began contacting my office shortly after the beginning of the year, the effective date of the amendments to Tex. Civ. Prac. & Rem. Code § 22.001. As you know, court reporting services are often used by attorneys to collect documents and records. This collection process typically involves a cover-letter type form affidavit signed by the custodian of the records and obtained by subpoena; proper completion of the affidavit allows the records to be admitted as evidence without having to call the custodian as a witness in court.

While Section 22.001 appears to be directed at witnesses who will attend court, it seems that it has been the practice of court reporting services to attach the old \$1 witness fee to the subpoenae served by them on custodians of records. These services typically front the costs of fees and copying charges. Some services serve as many as 50 subpoenae per day, which has necessitated increasing witness fee outlays from \$50 to \$500 per day.

ATA

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witness fees for custodians of records
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The question now arises whether or not such services are required to attach any witness fee to subpoenae of persons who are not expected to attend court, but merely to provide records and an affidavit.

Since many of these firms are operating under the belief that such fees are required to be tendered to custodians of records, your prompt response would be most appreciated.

I have attached a copy of a fax from one such records collection firm, Carlson & Gates, Inc. which may outline the issues for you more clearly.

Thanks for your cooperation.

Sincerely,

A handwritten signature in cursive script, reading "Senfronia Thompson". The signature is written in dark ink and is positioned above the printed name and title.

Senfronia Thompson
Chair, Committee on Judicial Affairs

ST/pmwj